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June 19, 2017

Chief of Police Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Damon Arthur Seitz on March 10, 2017 by Escondido Police Officer J. White; Escondido Police Department Case No. 17002684; DA Special Operations Case No. 17-042PS; Deputy District Attorney assigned: Paul Reizen

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Damon Seitz by Escondido Police Officer J. White on March 10, 2017. A District Attorney Investigator responded to the scene and was briefed by your officers. This case investigation was presented to the District Attorney's Office for review on May 31, 2017.

Persons Involved

Mr. Damon Seitz was a 40-year-old male residing in the City of Escondido with his mother at the time of this incident. Escondido Police Officer J. White had been employed by the Escondido Police Department for over 11 years and was assigned to the Patrol Division at the time of the incident.

Summary

On the morning of March 10, 2017, Mr. Seitz called 911 and reported he found his mother unresponsive on her bedroom floor. Paramedics arrived and confirmed Seitz's mother's death. Escondido Police Officer White responded to assist with the death investigation. While officers were conducting their investigation, Seitz suddenly became agitated and produced a semi-automatic pistol. White ordered Seitz to drop his weapon. Seitz ignored White's commands and pointed his pistol directly at White. White shot Seitz multiple times. Seitz was transported to the hospital where he was pronounced dead. The shooting incident was captured on White's body worn camera.

Background Information

Mr. Seitz telephoned his sister (identified in this review as Mrs. S.B.) and notified her of their mother's death. S.B. told Seitz to call for an ambulance. Seitz then called 911 and reported he discovered his mother unresponsive and possibly dead. S.B.'s husband telephoned the Escondido Police Department and warned the responding officers Seitz had mental issues and was in possession of several firearms. S.B.'s husband said he also called to make sure Seitz was telling

the truth about his discovery of the mother's death. The police dispatcher informed the officers of the weapons prior to their arrival at Seitz's residence.

Statement of Officer White

Officer White responded to a death investigation call with LE1. The radio call information stated the decedent had been drinking heavily and the reporting party (Mr. Seitz) last saw his mother alive at about 9:00 p.m. on the night before. On the way to the radio call, White learned Seitz's brother-in-law alerted the police department there were firearms in the house and added Mr. Seitz had mental issues.

LE1 and Officer White arrived at the scene at about the same time. Mr. Seitz met them at the driveway of his residence and spoke with them for a short time. Seitz told White and LE1 he last saw his mother walking several days ago and discovered her body this morning. Seitz then led them inside. Seitz showed them the master bedroom where Seitz's mother was found deceased on the floor. White saw the barrels of three long rifles as he walked past a bedroom on the right side of the hallway. There was no one else in the residence.

Officer White noted inconsistencies in Mr. Seitz's responses to their death investigation questions. White checked the mother's bedroom and did not see or smell any alcohol in the bedroom. White and LE1 checked the decedent for signs of trauma but observed none. Seitz appeared to have some diminished mental capacities and may not have fully understood timeframes when answering the officers' questions.

Just prior to the shooting, LE1 and LE2 went outside to the driveway. LE1 asked Officer White to keep an eye on Mr. Seitz. Seitz was sitting in a recliner near the front door. White watched Seitz from the threshold of the front door and engaged in small talk with Seitz.

Mr. Seitz unexpectedly stood up and approached Officer White. Seitz stuck his right hand out toward White in an aggressive manner and told White to leave. Based on Seitz's actions, White began to think there may be more to the mother's death than initially stated by Seitz. White felt threatened by the way Seitz approached him and the way he was acting. White decided to detain Seitz by trying to grab Seitz's outstretched right hand to gain control of him.

As Officer White was attempting to grab Mr. Seitz's hand, Seitz stepped back and pulled out a semi-automatic pistol from his person. White did not see where Seitz had the gun concealed before that. As soon as Seitz pulled the gun, White took a step backward and drew his pistol. White yelled rapidly four to five times at Seitz to, "Drop the gun."

Mr. Seitz held the semi-automatic pistol in his right hand and manipulated the slide portion of the gun with his left hand to chamber a bullet. Seitz started to raise the gun up towards Officer White. Seitz held the pistol in front of him between his stomach and chest. White could not reach Seitz or move to a position of cover. White worried Seitz would either shoot him or the other officers. White fired his weapon four times at Seitz. The situation unfolded very rapidly and White did not have enough time to try anything else to avoid shooting Seitz. White believed he or the officers behind him would have been shot if White did not shoot Seitz.

Law Enforcement Witnesses

In addition to Officer White, there were two other law enforcement officers present at the Seitz residence at the time of the shooting. Those law enforcement witnesses are hereafter identified as Law Enforcement Witnesses One, and Two. LE1 was a patrol officer and had been employed by the Escondido Police Department for seven years with five years of previous law enforcement experience. LE2 was a patrol sergeant and had been employed by the Escondido Police Department for twelve years.

Law Enforcement Witness One (LE1)

LE1 was dispatched to investigate the report of a death. LE1 was aware Officer White volunteered to provide cover on the radio call. Both LE1 and White arrived at the Seitz residence at approximately the same time. LE1 spoke with Mr. Seitz and learned Seitz's mother had died in her bedroom. LE1 learned Seitz and his mother lived alone in that residence. LE1 obtained preliminary information from Seitz regarding the discovery of the death and asked Seitz about the last time he saw his mother alive. Seitz gave inconsistent statements to LE1 about when the body was discovered.

LE1 obtained the telephone number of Seitz's sister (Mrs. S.B.) and called S.B. to verify Seitz's claim about discovering the mother's body. LE1 stepped outside of the residence to speak on the phone with S.B. LE1 told Officer White, "I need you to stay with this guy."

Mrs. S.B. asked whether they were going to leave Mr. Seitz's guns at the house. LE1 explained if guns were registered to Seitz, he (LE1) could not take them. S.B. expressed concern for public safety because there was a school across the street and S.B. did not think Seitz should have weapons. LE1 told S.B. he would question Seitz to determine if he was stable enough to have the firearms and request Seitz's permission to take the weapons for safe keeping.

At that point, LE1 heard a commotion and noises in the background. LE1 immediately put his phone away and turned around. LE1 heard Officer White say loud and clearly, "Put the gun down. Put the gun down." LE1 ran up to White's left side at the front door. While still about six to eight feet away, he heard White repeat for the third time, "Put the gun down." When within about one foot from White, LE1 heard the racking sounds of an automatic pistol before he heard shots fired. LE1 did not know if it was White or Mr. Seitz that fired their guns.

LE1 saw Mr. Seitz with a black object in his hand as he fell to the ground in the family room. LE1 entered the house and kicked the gun from the area next to Seitz's right hand. The gun moved about three or four feet from Seitz. LE1 performed CPR on Seitz until the paramedics arrived and took over the medical intervention.

Law Enforcement Witness Two (LE2)

LE2 is a patrol sergeant. He responded to a death investigation at the Seitz residence. Upon arrival, he met with LE1 and Officer White. LE2 walked up to the residence and saw Mr. Seitz. LE2 asked Seitz if he could enter the house. Seitz invited him in and confirmed Seitz was the reporting party. LE2 offered Seitz his condolences and asked if the other two officers (White and LE1) were in the back bedroom. Seitz said they were and directed LE2 to the back bedroom.

LE2 spoke with the officers in the back bedroom. Thereafter, LE2 walked outside and stood in the driveway next to LE1, who was on the phone. Officer White was standing by the front doorway and Seitz was in the living room.

Officer White began shouting commands and LE2 believed he heard White yell several times, "Drop the gun." LE2 turned on his body worn camera. As LE2 rushed to White, he heard approximately three shots fired. LE2 saw Mr. Seitz on the ground from the shooting. Seitz's arms were out to his sides. LE2 saw a large framed handgun on the ground about five feet from Seitz's body. LE1 told LE2 he moved the gun away from Seitz. LE2 requested medics and additional patrol resources to respond to the location.

Civilian Witnesses

Investigators conducted an extensive search for witnesses throughout the neighborhood. None of the neighbors saw the events involving the fatal shooting. The majority of the neighbors were unaware of the shooting incident. Five of the neighbors said they heard the sounds of possible gunshots but did not see what happened.

Statement of Civilian Witness: S.B.

Mrs. S.B. is the sister of Mr. Seitz. S.B. informed investigators Seitz was deprived of oxygen at birth which resulted in learning disabilities. Seitz had lived with his mother his whole life. At some point, Seitz took medication for depression and other psychotropic drugs for unspecified mental illness.

Mrs. S.B. stated she had recently spoken with her mother over the phone and learned her mother had the stomach flu. S.B. called her mother again a week later, on March 9, 2017. There was no answer. S.B. left a voicemail request for a call back, but did not receive a response. S.B. thought it unusual because her mother never took that long to respond. S.B. left another message on the home phone, knowing her brother would be able to hear the message on the answering machine. On the morning of March 10, S.B. left another message on her mother's phone. S.B. then called her mother's employer and learned they had sent an employee to the Seitz residence March 7th or 8th to check on the mother's welfare. They received no answer at the door.

Mrs. S.B. received a call from Mr. Seitz a short time later. Seitz sounded upset. Seitz asked, "Are you sitting down? I have bad news about mom." S.B. asked Seitz if their mother was alive. Seitz told her, "Mom is dead." S.B. instructed Seitz to call an ambulance. Seitz told S.B. that something was wrong with him and he needed to talk to someone but it couldn't be S.B. Seitz then hung up the phone.

Mrs. S.B. stated Mr. Seitz knew the difference between right and wrong, but didn't "understand things" and his "grasp of reality was never perfect." Furthermore, Seitz previously told S.B. when he got upset, he would black out, and only realize what had happened after regaining consciousness. On one occasion, Seitz even strangled S.B. and S.B. had to call the police. Given Mr. Seitz's prior history, S.B. and her husband decided to call the Escondido Police Department to have officers do a health and wellness check on Seitz and his mother.

Mrs. S.B. was on the phone with LE1, who was at the scene investigating her mother's death. S.B. requested LE1 remove all the firearms from the home. LE1 told her he could not remove the firearms without Mr. Seitz's permission. S.B. heard Seitz in the background scream something incomprehensible and then a smashing noise. LE1 told her he had to get off the phone and the call ended.

Investigation

The scene was secured, photographed, and investigated by Escondido Police Homicide detectives. A review of the audio-recorded 911 call initiated by Mr. Seitz revealed Seitz said he discovered his mother unresponsive that morning. When Seitz was asked for more detailed information regarding the circumstances, Seitz mentioned he was a war veteran and he was upset by this event. Seitz then alleged his mother drank heavily and was last seen by him in her bedroom on the previous night. Seitz told the operator he had weapons in the house but he would put them away before the paramedics arrived.

Officer body-worn-camera video was reviewed for this investigation. Officer White turned his camera on immediately after the shooting occurred. The camera's built in memory captured the events 30 seconds prior to its activation, without the audio feature. The audio recording did not start until after the shooting ended and Mr. Seitz was lying on his living room floor. The video recorded event (without sound) depicts Seitz approaching White and pointing outward with his right hand. Seitz takes a few steps back, holding his pistol in his right hand while manipulating the slide of his pistol with his left hand. Seitz then holds his pistol with both hands while pointing it at White. White fires his handgun at Seitz, who falls to the ground. LE1 then enters the residence and kicks Seitz's firearm lying nearby his right hand from outside of Seitz's reach. LE1 and LE2 activated their body-worn cameras after the shooting occurred, and therefore, their cameras did not capture the shooting.

The crime-scene investigation revealed Officer White fired his .40 caliber firearm four times from a position outside the front doorway of the residence. Mr. Seitz received three gunshot wounds. The wounds were to Seitz's head and chest. Four expended .40 caliber shell casings were recovered at the scene. A loaded Sig Sauer 9mm pistol, Model P6, held by Seitz was recovered in the living room, near the location Seitz fell. The Sig Sauer pistol had one live round in the chamber and six rounds in the magazine. A 9mm casing was recovered from the living room but it was determined Seitz did not fire his weapon during this incident. Toxicological testing of Seitz's blood detected no alcohol, common drugs of abuse, or medications.

Legal Analysis

Under California law, Peace Officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers.

Chief Craig Carter
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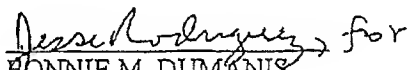
Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if he reasonably believed he or someone else was in imminent danger of suffering bodily injury, believed the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger. In determining whether a person's beliefs were reasonable, it is necessary to look at all the circumstances as perceived by the person using self-defense and to consider what a reasonable person in a similar situation with similar knowledge would have believed.

Conclusion

During this incident, Mr. Seitz called 911 to report his mother's death. Escondido police officers arrived and questioned Seitz. Seitz gave inconsistent statements regarding the discovery of his mother in her bedroom. Seitz suddenly became agitated and demanded Officer White leave his residence. Seitz is seen on video producing a loaded semi-automatic pistol and pointing it directly at Officer White. Seitz ignored White's commands to "Drop the gun." Seitz was correctly perceived as an immediate threat to the officer's life. Based on these circumstances, it is apparent Officer White fired in self-defense. White therefore bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,


JESSE RODRIGUEZ for
BONNIE M. DUMANIS
District Attorney
County of San Diego